

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SERVICE EMPLOYEES
INTERNATIONAL UNION, et al.,

No. C 09-00404 WHA

Plaintiffs,

v.

**ORDER DENYING MOTION TO
ALTER OR CORRECT RULE 54(B)
JUDGMENT AFTER JURY TRIAL**

SAL ROSELLI, et al.,

Defendants.

Defendants move to correct the judgment to alter or amend the Rule 54(b) judgment after jury trial (Dkt. No. 627) or in the alternative to correct that judgment so that to the jury's verdict pursuant to the jury instructions. Defendants argue that in order to be consistent with the final charge to the jury, the judgment should reflect joint and several liability.

Jury Instruction Number 30 stated:

If you find any liability for a defendant, enter all amounts for which you find that defendant liable, including any amounts for which others may also be jointly liable. For example, if you find a defendant liable not only for his or her salary/benefits but also others' salaries, then enter all such amounts under "Salary and Benefits."

The special verdict form presented to the jury included a grid upon which the jury was instructed to enter for each defendant the amount of liability (if any) in several categories including salary and benefits, diversion of resources, increased security, lost dues, and total. This form restated this instruction contained in Number 30 of the final charge that the jury should enter

1 all amounts for which it found each defendant liable, “including any amounts for which others
2 may also be jointly liable.”

3 Defendants assert that based on these instructions, the jury must have predicated its
4 damages awards on joint-and-several, rather than individual, liability.

5 While the jury instructions and special verdict form invited the jury to find joint-and-
6 several liability, it did not require it to do so. When the jury filled out the verdict form, it did not
7 put down a uniform damages number for all liable defendants. With respect to salary and
8 benefits, the jury assessed defendant Emily Gordon \$1,400 in lost-salary defendants, but the other
9 liable defendants were each assessed \$6,600. With respect to diversion of resources, some
10 individual defendants were assessed \$30,000, while others were assessed \$60,000. The NUHW
11 was assessed \$720,000 for diversion of resources. While the sum of all assessments against the
12 individual defendants for diversion of resources also is \$720,000, this is not indicative of the
13 jury’s intent for each liable defendant to be joint-and-severally liable to the others. If the jury had
14 intended for each liable defendant to be joint-and-severally liable for the other liable defendants,
15 it would have awarded equal amounts for each category for which those defendants were liable.
16 Moreover, the sum of all assessments against the individual defendants for lost dues was \$12,000,
17 the assessment against the NUHW for lost dues was only \$4,000. This indicates that it is as likely
18 as not coincidence that the sum of the individual assessments for diversion of resources equaled
19 the assessment against NUHW for the same..

20 Defendants argue that the judgment currently allows for “double recovery,” but this is a
21 clear misreading of the jury instructions and the jury’s verdict. Even if joint and several liability
22 were awarded, it is clear that the jury did not intend to reduce the amount owed by each
23 individual defendant because it assessed different amounts from different defendants for the same
24 categories. Therefore any amendment allowing joint and several liability would only increase
25 some
26
27
28

1 defendants' overall liability. But as noted above, such an amendment is not warranted here.

2 For the foregoing reasons, defendants' motion is **DENIED**.

3
4 **IT IS SO ORDERED.**

5
6 Dated: June 22, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE